LEGAL NOTICE NO. 232

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304(1)(t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:

THE KENYA DEFENCE FORCES (MISSING PERSONS) REGULATIONS, 2017

1. These Regulations may be cited as the Kenya Defence Forces (Missing Persons) Regulations, 2017.

2. In these Regulations, unless the context otherwise requires—
   “Act” means the Kenya Defence Forces Act, 2012;
   “beneficiary” means a person designated as such under section 245 (3) of the Act;
   “duty” means routine duty, active service duty and training in the Defence Forces; and
   “Board” means a Board of Inquiry referred to under section 301(1) of the Act.

3. A person is considered missing under these Regulations if that person—
   (a) is an officer, a service member or a person to whom the Act applies; and
   (b) is declared missing following the findings and opinion of a Board of Inquiry under these Regulations.

4. The Chief of the Kenya Defence Forces shall cause to be kept and maintained a record of all missing persons.

5. (1) As soon as a Commanding Officer becomes aware that any person subject to the Act is missing, the Commanding Officer shall, in writing, forthwith notify the respective Service Commander.

   (2) The Commanding Officer shall after making the notification convene a Board to investigate the circumstances under which the person went missing.

   (3) The findings and opinion of the Board in original form shall be forwarded to the Service Commander who may—

   (a) where the findings reveal that the person is deemed missing under circumstances arising out of sections 62, 68, 74 or 75 of the Act, direct that efforts be made to recover or apprehend the person with a view to take appropriate disciplinary action;

   (b) where the findings raise a presumption of death beyond reasonable doubt in respect of the missing person, issue a certificate in accordance with section 298(3) of the Act; or
(c) where the findings do not establish the fact in either (a) or (b) above, declare the person missing.

6. Where the Service Commander issues a certificate under regulation 5 (3)(b), the Commanding Officer shall forward the certificate together with the report of the Board and the personal record of the missing person to the Chief of the Kenya Defence Forces for processing of death benefits.

7. Where a person is either declared missing under regulation 5(3)(c) or is presumed dead by a Court of competent jurisdiction, the Service Commander shall upon receipt of the Court Order forward the same together with the report of inquiry and his personal record to Chief of the Kenya Defence Forces for processing of his or her death benefits.

8. (1) The full names, particulars of next of kin and dependants of a person who is declared missing under regulation 5(3)(c), the date and place where he went missing shall be entered on a list to be called the list of missing persons maintained at the Kenya Defence Forces headquarters which shall be in the form prescribed in the Schedule to these Regulations.

(2) A missing person’s name shall remain in the list of missing persons until—

(a) the person reappears; or

(b) it is ascertained that that person has been captured by and is in the custody and power of the enemy voluntarily; or

(c) the Service Commander makes a presumption of death in respect of the person.

(3) A person who is under the power or custody of the enemy shall remain in the list of missing persons unless the Service Commander is satisfied that circumstances under sections 62 and 68 of the Act exist against the person.

9. Where upon the expiry of seven years from the date a person who went missing, has neither been found nor heard of by the Kenya Defence Forces or by any other person who would ordinarily be expected to hear of him or her if the person were alive, including his next of kin or dependants, nor ascertained to be dead, that person shall thereupon by an Order of a Court of competent jurisdiction be presumed dead, and the Service Commander shall upon receipt of the Order forward the same together with the report of inquiry and his or her personal record to Kenya Defence Forces Headquarters for processing of death benefits.

10. Subject to Regulations 11 and 12, a missing person whose name is on the list of missing persons shall—

(a) be entitled to the pay to which that person was entitled as at the date the person went missing or to which that person would have been entitled subsequently but for the fact that he or she went missing;
(b) be eligible for promotion according to any current existing relevant regulations, taking into account his or her seniority in his or her rank as at the date he or she went missing and working on the presumption that he or she has been on duty for the whole period he or she has been missing; and

(c) be entitled to any medals, awards or decorations that could have been awarded to him or her had he or she been physically in the service during the period he or she has been missing.

11. (1) Where a missing person has incurred liability or service debts which he is liable to pay in respect of any charges relating to quartering, mess bills, light, water or any other government liability, the Defence Council shall in the first instance settle the liability, debts or charges against the pay of the missing person before complying with the provisions of regulation 10.

(2) Despite paragraph (1) the Defence Council shall to the greatest extent possible write off debts owed to the Government by a missing person.

12. (1) Upon sufficient and credible information being received by the Service Commander—

(a) that a missing person is dead, whether at the hands of the enemy or otherwise, the Service Commander shall thereupon cause the name of the missing person to be struck off from the list of missing persons; or

(b) that the missing person is in the hands of the enemy voluntarily or that there are reasonable grounds for suspecting him or her of being guilty, by words, act or conduct, of any of the conditions stated in regulation 7(1) (b) (i), (ii) or (iii) of the Kenya Defence Forces (Board of Inquiry) Regulations, 2017 or that he or she has defected to the enemy, then the Service Commander shall thereupon cause the name of the missing person to be struck off from the list of missing persons.

(2) Upon a missing person’s release and return to duty or, if he or she dies in enemy custody and the fact of his or her death has been ascertained by the Service Commander, in either case, the payment of his or her emoluments aforesaid to his or her beneficiary shall cease.

13. The period during which a persons’ name remains in the list of missing persons shall, where applicable, be deemed as reckonable service for the purposes of pension or death gratuity under the relevant regulations relating to the defence forces pensions and gratuity.

14. Nothing contained in these Regulations shall be construed to invalidate or limit the power of any Court of competent jurisdiction to find or declare a person dead under the provisions of any other existing laws.
SCHEDULE

LIST OF MISSING PERSONS

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Svc No.</th>
<th>Rank</th>
<th>Name</th>
<th>Unit</th>
<th>Date Declared Missing</th>
<th>Circumstances the person went missing</th>
<th>Place</th>
<th>Next of Kin</th>
<th>Dependants</th>
</tr>
</thead>
</table>


SAITOTI TOROME,
Principal Secretary and
Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and
Chairperson to the Defence Council.

LEGAL NOTICE NO. 233

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304 (1) (i) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:

1. These Regulations may be cited as the Kenya Defence Forces (Board of Inquiry) Regulations.

2. In these Regulations, unless the context otherwise requires—
   “Act” means the Kenya Defence Forces Act, 2012;
   “Board” means a Board of Inquiry convened in accordance with these regulations;
   “public property” includes any property of-
   (a) the national or a county government;
   (b) a public body;
   (c) allied forces; or
   (d) public fund authorized by the Chief of the Kenya Defence Forces, Service Commander or the Commanding officer and managed in accordance with the law relating to public finance management; and
   “represented” means represented by an officer or an advocate.

3. A Board of Inquiry may be convened for the purposes of section 301 of the Act by order of the Defence Council, the Chief of